

Appeal from decisions of the Eastern States Office, Bureau of Land Management, denying appellant's protests against issuance of oil and gas leases ES-31202 and ES-31707.

Reversed.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications: Generally

An oil and gas lease application must be rejected pursuant to 43 CFR 3112.2-1(d) (1982) where the applicant uses the address of another person or entity which is in the business of providing assistance to those participating in the simultaneous oil and gas leasing system. Where a person or entity assists oil and gas lease applicants by forming them into partnerships for this purpose, arranging for the filing of their applications by a filing service, receiving remuneration for such services, and by processing and collecting the applicants' mail through the use of a common address; this constitutes assistance to participants in the oil and gas leasing program pursuant to 43 CFR 3100.0-5(d) (1982).

APPEARANCES: Gant Redmon, Esq., Alexandria, Virginia, for appellant; James E. Nesland, Esq., Denver, Colorado, for Janet Godfrey.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Margaret G. Pascale has appealed from decisions of the Eastern States Office, Bureau of Land Management (BLM), dated September 12, 1983, denying her protest against the issuance of oil and gas lease offers ES-31202 and ES-31707. As a part of simultaneous oil and gas lease offering 82-3, the Department offered parcel 348 (ES-31202), and as part of simultaneous oil and gas lease offering 82-5, the Department offered parcel 176 (ES-31707).

For parcel 348, Orion (a partnership) was drawn with first priority; Indus (a partnership) was drawn with second priority; and Margaret Pascale was drawn with third priority. The lease was issued to Orion based on its priority, but BLM subsequently canceled the lease because Orion failed to execute the lease. On October 15, October 27, and November 17, 1982, Pascale

filed protests against the issuance of the lease to either Orion or Indus. In its decision, BLM dismissed appellant's protest, in part because appellant did not identify how or what regulation had been violated. As to appellant's allegations that the partnership agreement constitutes an illegal arrangement and should be rejected pursuant to 43 CFR 3112.6-1 (1982), BLM found that there had been no violation of the regulations. 1/

For parcel 176, Janet K. Godfrey was drawn with first priority and appellant Pascale was drawn with second priority. On November 17, 1982, Pascale filed a protest against the issuance of the lease to Godfrey. In its decision, BLM dismissed her protest, citing Phillip A. Kulin, 53 IBLA 57 (1981). BLM found that the protest was based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

Appellant sets forth several arguments in support of her appeal. Among those are: (1) The applications filed by Indus and Godfrey violated 43 CFR 3112.2-1(d) (1982) because Indus and Godfrey used the address of Aplan corporation on their applications; (2) the arrangement which Orion, Indus, and all of the "Aplan Partnerships" have with the Aplan Corporation and with Energy Filing Corporation violates the prohibition against a person or entity holding, owning, or controlling an interest in more than one application for a particular parcel; (3) the application of Janet Godfrey should be rejected for failure to properly sign it, in violation of 43 CFR 3112.2-1(b) (1982).

[1] The applicable regulation, 43 CFR 3112.2-1(d) (1982), 2/ provides that:

The application shall include the applicant's personal or business address. All communications relating to leasing shall be sent to that address and it shall constitute the applicant's address of record for the purpose provided in § 3112.4-1 of this title. The applicant shall not use the address of any other person or entity which is in the business of providing assistance to those participating in the simultaneous oil and gas leasing system. [Emphasis added.]

The purpose of subpart 3112.2-1(d) (1982) was explained by the Department at the time it was proposed as follows:

1/ At the request of appellant, an investigation was conducted by the Office of the Inspector General to determine if the Aplan Corporation had devised an unlawful scheme to file multiple applications for leases. In its decision, BLM noted that the "investigation has been completed and no evidence of wrong doing has been found." While the Report of Investigation by the Office of Inspector General did not decisively conclude that there was "no evidence of wrong doing," the analysis contained in the report lends support to the conclusion of no wrongdoing, at least with respect to the allegations of multiple filings. The report, however, did not consider the possible violations of 43 CFR 3112.2-1(d) (1982), with which we are here principally concerned.

2/ The current regulation, 43 CFR 3112.2-1(b), is substantively the same.

Filing Service Abuses

Within the framework of present regulations, most applicants employ agents, commonly known as filing services, which promise to provide assistance in participating in the simultaneous oil and gas leasing system.

Most filing services file their client's drawing entry cards directly with the Bureau of Land Management and use the service's address on the cards instead of the applicant's personal address. Typically, filing services rubberstamp the client's signature on the card or have the client send the cards to the filing service pre-signed.

The drawing entry card is the applicant's offer to lease. Leases are issued in the name of the drawing winner upon submittal of the first year's rental within 15 days after notification. The applicant is not required to sign the lease form.

The existing system has been abused by some filing services. Lease offers have been filed in the names of deceased persons. Drawing winners have been victimized by filing services which fail to pass on drawing results. Some services have advanced the first year's rental and obtained leases which have then been assigned without their client's knowledge. In these cases, it is believed, the assignment is often in accordance with a preexisting contract between the filing service and an oil company or middleman.

The following proposed regulatory changes address these abuses:

* * * * *

(3) The return address used on the drawing entry card would be required to be the applicant's personal or business address. A filing service's address could not be used. [Emphasis added.]

44 FR 56176 (Sept. 28, 1979). The publication noted that this Board had deplored "the proclivity of some leasing services to exploit every conceivable loophole in the letter of the regulations without any discernible regard for their spirit and intent," citing W. H. Gilmore, 41 IBLA 25 (1979). See Maurice W. Coburn (On Reconsideration), 82 IBLA 112, 115-16 (1984).

The address of record used by Indus on its application is "Indus, c/o Aplan, 7 Tobey Village Office Park, Pittsford, NY 14534." The address of record used by Orion on its application is "Orion, c/o Aplan, 7 Tobey Village Office Park, Pittsford, NY 14534." Indus changed its address to "Indus, c/o Aplan, P.O. Box 440, Pittsford, NY 14534," and later changed its address to "Indus, c/o Aplan, P.O. Box 453, Pittsford, NY 14534." Orion changed its address to "Orion, P.O. Box 440, Pittsford, NY 14534," and later changed its address to "Orion, P.O. Box 435, Pittsford, NY 14534." The record reflects that 20 partnerships used the Aplan address in order to participate in the

simultaneous oil and gas lease drawing. The Aplan address at 7 Tobey Village Office Park in Pittsford, New York, was used prior to the May 1982 drawing. Then, the partnerships purportedly changed their addresses, and used a series of post office boxes.

Here, Indus and Godfrey contend that Aplan was not "in the business of providing assistance to those participating in the simultaneous oil and gas leasing system." See 43 CFR 3112.2-1(d) (1982). Godfrey and Indus contend that Aplan is "in the business of providing general financial advisory and management services to clients." Indus and Godfrey state that Aplan's functions include the "collection and processing of mail received by its clients, including Godfrey and Indus." 43 CFR 3100.0-5(d) (1982) 3/ provides as follows:

"Person or entity in the business of providing assistance to participants in a Federal oil and gas leasing program" means those offering services for consideration in connection with the acquisition of Federal oil and gas leases. Included in this definition are those enterprises, commonly known as filing services, which sign, formulate, prepare, offer advice on formulation or preparation, mail, deliver, receive mail or otherwise complete or file lease applications or offers for consideration. Excluded from the definition are those services which only tangentially relate to Federal oil and gas lease acquisition, such as general secretarial assistance, or general geologic advice which is not specifically related to Federal lease parcels or leasing. [Emphasis added.]

Therefore, the issue is whether Aplan is an entity in the business of providing assistance to participants in a Federal oil and gas leasing program pursuant to subpart 3110.0-5(d) (1982). If so, Aplan has violated 43 CFR 3112.2-1(d) (1982); therefore, the application of Indus and Godfrey would have to be rejected pursuant to 43 CFR 3112.6-1 (1982). 4/

It is important to note that the regulation proscribing the use of the address of "any person or entity which is in the business of providing assistance to those participating in the simultaneous oil and gas leasing system" (43 CFR 3112.2-1(d) (1982)) includes, but is not limited to, "those enterprises commonly known as filing services * * *." (43 CFR 3100.0-5(d) (1982)). The fact that Aplan maintains that it is not a "filing service" is therefore immaterial. The issue is whether it "is in the business of providing assistance" to applicants by "offering services for consideration in connection with the acquisition of Federal oil and gas leases."

Aplan attracted a large number of clients who desired to invest substantial sums of money to participate in the simultaneous oil and gas leasing

3/ This regulation was later deleted. The current regulations do not define "person or entity in the business of providing assistance to participants in a Federal oil and gas leasing program."

4/ The current regulation, 43 CFR 3112.5-1(a), is substantively the same.

system for the purpose of acquiring Federal oil and gas leases. Aplan organized these clients into 20 or more partnerships, and arranged for the preparation and execution of the documents incident thereto. These partnerships had no business purpose other than to participate in the simultaneous oil and gas leasing program and to thereby acquire Federal leases. Aplan selected and contracted with the Dallas-based filing service to process the applications to be filed by the Aplan partnerships. Aplan provided the address of record for the partnerships and received their mail. Aplan kept the accounts for the partnerships. Aplan holds the power of attorney to act on behalf of the partnerships. When a partnership won a lease, Aplan billed the partnership and then forwarded a check drawn on the partnership account. BLM's notice to a partnership that it had been successful in a lease drawing would be sent to Aplan's address and received by Aplan personnel, who would then forward it directly to the filing service without notifying the partnership. The filing service would inform the partnership that it was successful. Therefore, it made little difference whether the address used by the partnerships was that of Aplan or the filing service. Aplan's function clearly constituted "offering services for consideration in connection with the acquisition of Federal oil and gas leases," and it was, therefore, by definition, "in the business of providing assistance" to applicants.

The relationship among Aplan, the partnerships, and the filing service (Fairway Exploration Company, Inc. (Fairway), which also does business as Energy Filing Corporation) sheds additional light on the issue. Aplan contends that Fairway provides the assistance to the partnerships. However, Aplan Securities, a subsidiary of Aplan Corporation, received a "finders fee" from Fairway which consisted of 8 percent of the total investment of the 20 partnerships. Fairway's services include the selection of parcels, submission of applications, and preparation of periodic progress reports. Aplan acts in concert with Fairway by sending Fairway the applications. When Aplan changed its address (and that of its partnerships), BLM was notified of the change by Fairway. The 8-percent fee received by Aplan from Fairway, and the mutual acts in concert by Aplan and Fairway, constitutes clear and convincing evidence of the close relationship between Aplan and Fairway. Therefore, both Aplan and Fairway provided assistance to Indus and Godfrey for consideration in connection with the acquisition of oil and gas leases pursuant to 43 CFR 3100.0-5(d) (1982).

The applicants, through the use of Aplan, used a common address from which applications were processed. Their use of Aplan's office address, and later use of a series of post office boxes under Aplan's control, evinces a subterfuge to circumvent the regulation. See Maurice W. Coburn (On Reconsideration), *supra* at 117. The use of Aplan's address in the applications is a direct violation of subpart 3112.2-1(d), and is not a "trivial" or "nonsubstantive" error. Cf. Conway v. Watt, 717 F.2d 512 (10th Cir. 1983). Both Aplan and Fairway received BLM mail addressed to the partnerships before the partners were informed of it by their services, which is precisely what the regulation was designed to prohibit.

Here, there is no reason to depart from the requirement of strict compliance with the regulations. E.g., Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), *aff'd sub nom.*, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976); Sorenson v. Andrus, 456 F. Supp. 499, 501 (D. Wyo. 1978). See also Gendelman v. Clark, Civ. No. 82-3693 (D.D.C. Aug. 28, 1984).

The applicants, Indus and Janet K. Godfrey, violated 43 CFR 3112.2-1(d) (1982) by using Aplan's address on their applications. Therefore, BLM's dismissal of appellant's protest was improper, and the applications of Indus and Godfrey must be rejected pursuant to 43 CFR 3112.6-1 (1982).

Appellant also contends that the arrangement existing among Aplan and the 20 partnerships violates the prohibition against a person or entity holding, owning, or controlling an interest in more than one application for a particular parcel. Thus, 43 CFR 3112.2-1(f) provides that "[n]o person or entity shall hold, own or control any interest in more than one application for a particular parcel." See 43 CFR 3112.6-1(c) (1982) (prohibited agreements, schemes, plans, or arrangements). Pascale contends that Energy Filing Corporation's filing service agreements contain an option provision which creates a prohibited interest or arrangement. However, the option is exclusively that of the clients. The client is free to sell the lease to anyone. This Board has held that such options do not create an improper interest or arrangement. Geosearch, Inc., 39 IBLA 49 (1979). As long as the client is not obligated to sell or transfer the lease, or an interest therein, to the filing service, nor to share any of the proceeds, there is no prohibited interest or arrangement. There is no evidence in the record, or in the Inspector General's Report of Investigation, that indicates any multiple filings by any of Aplan's partnerships.

Appellant also contends that Godfrey's application should be rejected for failure to properly sign it, in violation of 43 CFR 3112.2-1(b) (1982). Godfrey's application was signed "Energy Filing Corporation as agent for Janet K. Godfrey, Partner, by Michelle Mayer." Corvus, a partnership having an interest in the application, and Energy Filing Corporation, a filing service, were both properly noted on the application. The signatory was authorized to sign on behalf of the applicant; therefore, there was no violation of subpart 3112.2-1(b).

Nevertheless, the violation of 43 CFR 3112.2-1(d) (1982) is fatal to the protested applications.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are reversed.

Edward W. Stuebing
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

James L. Burski
Administrative Judge